

IN THE EASTERN DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES E. STEPP, JR.	: CIVIL ACTION
	:
v.	:
	:
PATRICK MANGOLD, DETECTIVE	:
AND CHARLES CRAIG, DETECTIVE	: No. 94-2108

MEMORANDUM AND ORDER

Norma L. Shapiro, J.

July , 1997

James E. Stepp, Jr. ("Stepp") filed a pro se action in 1994 under 29 U.S.C. § 1983. Stepp alleges the defendants, Detective Patrick Mangold ("Det. Mangold"), a Philadelphia Police Officer and Detective Charles Craig ("Det. Craig"), a Lower Merion Police Officer, violated his due process rights by altering his confession to two robberies to make it appear that he confessed to four bank robberies. He claims this altered confession lead to his conviction in one of the robberies for which he denied guilt; he claims this conviction was later overturned. He alleges false arrest, conviction and imprisonment.

Det. Craig filing a Motion to Dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on August 11, 1994, stated the conduct attributed to him was not a constitutional violation.¹ This action was placed in administrative suspense

¹Det. Craig also seeks dismissal because he alleges Stepp could not recover damages against him because Stepp did not suffer a compensable. See Memphis Community Sch. Dist. v. Stachura, 477 U.S. 299, 308 (1986). There is no compensable injury until plaintiff demonstrates his conviction has been overturned. Heck v. Humphrey, 114 S. Ct. 2364, 2372-73, requiring a plaintiff seeking compensatory damages for a false conviction to demonstrate his conviction has been overturned. See Defendant Detective Charles Craig's Motion to Dismiss Plaintiff's Amended Complaint, p. 4.

from January 24, 1995 to March 25, 1997 while the court tried to obtain counsel for Stepp. When this attempt was unsuccessful, Stepp answered the motion to dismiss; his answer alleged new facts, including an assertion that his Montgomery County conviction has been overturned. Since Stepp has adequately alleged compensable harm caused by Det. Craig, the motion to dismiss will be denied.

I. FACTS

Detectives Mangold and Craig questioned Stepp regarding four robberies on May 22, 1991. Plaintiff confessed to two of these robberies in federal court. Stepp never confessed to the second two robberies. Plaintiff was charged in Montgomery County with these other two bank robberies. In April, 1993, Stepp was acquitted of one of the Montgomery County bank robberies.

A trial on the remaining count commenced in December, 1993. The Assistant District Attorney, Karen Ricca ("A.D.A. Ricca"), asked to enter an unsigned confession into evidence. Det. Mangold had typed this confession at Stepp's May 22, 1991 questioning. Stepp had signed the first two pages, but refused to sign the remaining pages because he noticed they inaccurately stated he confessed to the Montgomery County robberies. Stepp

Stepp did not allege his conviction was overturned in his amended complaint, but so asserts in his Answer to Defendant's Motion to Dismiss Plaintiff's Amended Complaint ("the Answer"), p. 1; the Lower Merion Police Department letter dated July 11, 1997 from Joseph J. Daly, Superintendent of Police, Township of Lower Merion to Colleen Bannon, Esq., Marshall, Dennehy, Warner, Coleman and Goggin states that based on new evidence, Stepp's conviction was overturned in 1995.

alleges Det. Mangold refused to correct this error and changed the dates so it appeared as if Stepp had confessed to all four bank robberies.

Stepp asserts Det. Craig knew Stepp denied having knowledge of the Montgomery County robberies. Amended Complaint, ¶10. Furthermore, Stepp states that Det. Craig "knew beforehand," that the confession had been "doctored," when he handed it to A.D.A. Ricca. Answer, ¶ 3. In a July 12, 1997, letter to the court ("Letter to the Court") Stepp maintains, "Det.'s [sic] Charles Craig and Patrick Mangold acting in concert with others did in fact alter dates of an unsigned confession to suit the needs pertaining to the Bank Robbery which the plaintiff was on trial for." p. 1.²

At trial, A.D.A. Ricca asserted she had just received this document from Det. Craig who received it from Det. Mangold. Stepp's counsel objected to admission of the confession, but the court ruled the document could be admitted to impeach Stepp if he took the stand. As a result, Stepp, who had intended to testify, did not do so; he was convicted of the bank robbery. Stepp claims he would have taken the stand if A.D.A. Ricca had not

²In addition he states "plaintiff can prove that Det. Craig did in fact display a continuous pattern of deception while acting in concert with others to withhold numerous amounts of exculpatory evidence which was favorable to the plaintiff, and that the witness identification was tainted." Letter to the Court, pp. 1-2. However, these additional allegations were not stated in the complaint. Unless Stepp can identify specifically what evidence he is referring to, a proper response cannot be made by the defendants.

received the "doctored confession." Stepp states he would not have been convicted of this robbery count if he had taken the stand to testify. In 1995, as a result of new evidence developed by Lower Merion Township Detectives, Stepp's 1991 Montgomery County conviction was overturned.

II. MOTION TO DISMISS STANDARD

A complaint is properly dismissed if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. Bieros v. Nicola, et al., 860 F. Supp. 226, 229 (E.D. Pa. 1994). The court must accept as true all of the matters pleaded and all reasonable inferences that be can be drawn. Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

Pro se complaints must be construed liberally. Bieros, 860 F. Supp. at 229; Blassingale v. Administration at Suburban Gen. Hosp., No. CIV. A. 93-2601, 1993 WL 451491, at *1. However, vague and conclusory allegations do not give sufficient notice pleading and cannot survive a motion to dismiss. Bieros, 860 F. Supp. at 229; Sell v. Barner, 586 F. Supp. 319, 321 (E.D. Pa. 1984).

III. DISCUSSION

A defendant in a § 1983 claim must have personal involvement in the wrongdoing to be liable. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Personal involvement can be shown through allegations of personal direction, actual knowledge or acquiescence. Compare id. at 1205 (complaint of sexually

harassed state employee lacked particularity as to claims the Governor had actual knowledge of harassment simply because she had sent letters to his office complaining) with Boykins v. Ambridge Area Sch. Dist., 621 F.2d 75, 80 (3d Cir. 1980) (complaint alleging time, place, and persons responsible was sufficient to state § 1983 claim). Personal involvement has also been construed to mean "direct participation, or failure to remedy the alleged wrong after learning of it, or creation of a policy or custom under which unconstitutional practices occurred" Black v. Coughlin, 76 F.3d 72, 74 (2d Cir. 1996).

There is no "personal involvement" in a civil rights violation just because one defendant is the superior/boss of the other. See Wilson v. Vaughn, No. CIV. A. 93-6020, 1995 WL 491254 (E.D. Pa. Aug. 15, 1995)(insufficient personal involvement alleged against prison commissioner); Ashe v. Lohman, et al., No. CIV. A. 90-1783, 1990 WL 158056 (E. D. Pa. Oct. 16, 1990)(sufficient allegations of personal involvement by prison officials who ignored plaintiff's complaints). Where actual supervisory authority is lacking, mere inaction, in most circumstances, does not give rise to acquiescence. Robinson v. Pittsburgh, ___ F.3d. ___, No. CIV. A. 95-3594, 1997 WL 386102 (3d Cir. July 14, 1997).

Taking the pleading in a light most favorable to the pro se nonmovant, Det. Craig knew the confession been altered and he handed this "doctored" confession to A.D.A. Ricca for use in

prosecuting Stepp.³ The amended complaint gives Det. Craig sufficient notice of Stepp's allegations regarding what Det. Craig knew and what he did.

Det. Craig was not Det. Mangold's superior. The defendants worked for unaffiliated police forces. Det. Craig could not order Det. Mangold to fix the altered the documents. However, Det. Craig's alleged conduct was more than "mere inaction;" Det. Craig gave the documents to A.D.A. Ricca knowing they were "doctored" for use at trial to Stepp's detriment. Det. Craig acquiesced in Det. Mangold's wrongdoing when he delivered the documents to A.D.A. Ricca.

Additionally, Det. Craig acquiesced in the alleged misconduct of Det. Mangold when he knew Stepp claimed no knowledge of the other robberies, but allowed Det. Mangold to create a document in which Stepp confessed to committing these robberies and presented it to Stepp to sign. Even lacking actual supervisory authority, these unusual circumstances of the two officers allegedly acting in concert to the detriment of Stepp, created an opportunity for Det. Craig to remedy the wrongdoing.

³It is unclear whether Stepp alleges that Det. Craig actually participated in the alteration of the document. He states in his Answer "[t]he defendant(s) chang[ed] the date on the doctored confession" p. 2 (emphasis added). He also states in his letter to the court that "Charles Craig and Patrick Mangold . . . did in fact alter the dates of an unsigned confession" p. 1. There are no allegations in Stepp's amended complaint that Det. Craig participated in altering the confession. Because the court finds that Det. Craig's knowledge, acquiescence and actions are sufficient to withstand a motion to dismiss, it does not need to decide if Stepp alleges actual participation in the alteration of the confession by Det. Craig.

Det. Craig failed to take appropriate action; the actions he did take exacerbated the harm.

Det. Craig's knowledge of Mangold's wrongdoing, his refusal to take action to correct the wrongdoing, and his providing the false confession to A.D.A. Ricca sufficiently allege active participation, knowledge or acquiescence for Stepp's amended complaint to survive the motion to dismiss. Defendant Detective Charles Craig's Motion to Dismiss Plaintiff's Amended Complaint will be denied.

An appropriate order follows.

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ORDER

AND NOW, this day of July, 1997, upon consideration of Defendant Charles Craig's Memorandum of Law in Support of his Motion to Dismiss Plaintiff's Amended Complaint and Plaintiff's Answer thereto, it is **ORDERED** that the motion is **DENIED**.

J.